IN THE COURT OF APPEALS OF IOWA

No. 3-1093 / 12-2165
Filed January 9, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICKY LEE HULL JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Gary D. McKenrick, Judge.

Ricky Lee Hull appeals from his conviction for first-degree arson, arguing the district court erred in denying his motion to suppress the statements he made at the police station. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Katie Fiala, Assistant Attorney General, Michael J. Wolf, County Attorney, and Brian Donnelly, Assistant County Attorney, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

Ricky Lee Hull appeals from his conviction for first-degree arson. He argues the district court erred under our state and federal constitutions in denying his motion to suppress statements he made to police.[1] We affirm finding the statements were not obtained in violation of his rights under the Federal and Iowa Constitutions.

I. Facts and proceedings.

On May 26, 2012, a fire started at Hull's residence. During the fire Hull sustained burns to his arm. A fire marshal investigated the scene and found evidence of the manufacture of methamphetamine. A police officer called Hull and asked him to come to the station to speak with him about the fire. On May 31, 2012, Hull was driven by his father to the station, as he was taking morphine to help with pain associated with the burn. Hull's father entered the station with Hull but was informed the officer wished to interview Hull by himself. Hull was led to a small room where the officer and a representative from the department of human services asked him questions for about an hour. The officer informed Hull he was not under arrest, the door was unlocked, and he was free to leave. Hull was asked various questions about the fire, some of which involved the manufacture of methamphetamine in the apartment bathroom.[2]

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[1] Hull also raises this issue in the context of an ineffective-assistance-of-counsel claim. Because we find his claims are preserved by the motion to suppress evidence as we detail in this opinion, we will not address his claim in the context of ineffective-assistance-of-counsel.

[2] The interview was recorded, giving the district court and this court an opportunity to fully review the questions asked and answers given.

On August 9, 2012, Hull was charged by trial information with first-degree arson based on the manufacture of controlled substances under Iowa Code section 712.1 (2011). Hull filed a motion to suppress the statements he made during the May 31 interview, alleging the statements were made in violation of his Fifth and Sixth Amendment rights and article I, Section 10 of the Iowa Constitution. The State filed a resistance September 21, 2012, and a hearing was held seven days later. The motion was denied, and Hull was convicted after a jury trial on November 29, 2012. He appeals, arguing the court improperly denied his motion to suppress evidence.

II. Analysis.

> We review an appeal from a motion to suppress on constitutional grounds de novo. We look to the entire record and conduct an independent evaluation of the totality of the circumstances. We give deference to the findings of the district court, as it had the opportunity to observe witnesses and evaluate their credibility; however, we are not bound by those findings.

State v. Leaton, 836 N.W.2d 673, 676 (Iowa Ct. App. 2013) (internal citations omitted).

A. Error preservation.

The State argues that, because Hull's motion to suppress contained insufficient details, the issue is not preserved for our review. We do not agree. Our primary concern when considering whether an issue has been preserved for our review is whether the issue was adjudicated in the district court. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) ("If the court's ruling indicates that the court considered the issue and necessarily ruled on it, . . . the issue has been preserved."). Here, the motion stated he was under the influence of a controlled

substance, invoked his right to counsel, and requested relief under the Iowa Constitution. The State thoroughly resisted on the issues and briefed its response to the motion including references to both the state and federal constitution; the court fully considered the issues and entered a ruling referencing both state and federal constitutional law. The issues now raised were presented to and ruled upon by the trial court. We therefore find the issues are preserved for our review on direct appeal. *See id.* ("Where the trial court's ruling, as here, expressly acknowledges that an issue is before the court and then the ruling necessarily decides that issue, that is sufficient to preserve error.").

B. Custodial interrogation.

In its ruling, the district court concluded, "The circumstances surrounding [Hull]'s interview clearly establish that [Hull] was not in custody at the time of the May 31 interview." We agree.

> Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. . . . Miranda warnings are required only when the defendant is in custody or is otherwise deprived of his freedom of action in a significant way.

State v. Deases, 518 N.W.2d 784, 789 (Iowa 1994) (internal citations and quotation marks omitted). We consider the following when determining whether a person is in custody:

> In determining whether a suspect is "in custody" at a particular time, we examine the extent of the restraints placed on the suspect during the interrogation in light of whether "a reasonable man in the suspect's position would have understood his situation" to be one of custody. *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151, 82 L.Ed.2d 317, 336 (1984). We apply this test objectively. *State v. Miranda*, 672 N.W.2d 753, 759 (Iowa 2003). In making our determination, we consider the following four factors: "(1) the

> language used to summon the individual; (2) the purpose, place, and manner of interrogation; (3) the extent to which the defendant is confronted with evidence of [his] guilt; and (4) whether the defendant is free to leave the place of questioning." *Id.*

State v. Ortiz, 766 N.W.2d 244, 251–52 (Iowa 2009).

Regarding the first prong, the investigating officer testified he was unable to remember whether Hull contacted him or if he contacted Hull, but they had "a couple different conversations on the phone" before he asked Hull to come to the sheriff's office to meet him the next morning. Hull's father drove him to the sheriff's office. While the contact was initiated by the officer, the informal nature of the summons tends to show Hull was not in custody.

Next, we look to the purpose, place, and manner of interrogation. *Id.* While questioning took place in a small room in the police station with an officer and a representative from the department of human services, the remaining circumstances all weigh against custody under this factor. The questioning was casual; Hull felt free to tell the officer what questions he did not want to answer, and the officer accepted this response without pressuring Hull further. After talking a bit about Hull's educational and family background, the officer told Hull,

> I want to talk to you about several things today, Ricky, so you're not under arrest, okay? I told you that out there in the lobby when you came in here that you're not under arrest. . . . [A]t any point in time you're free to walk out that door. That door's not locked. . . . [Y]ou can leave whenever you want, okay?

Hull responded that he understood. When Hull told the officer he was not sure how much he wanted to answer without an attorney, the officer responded "[T]hat's totally up to you. I can't make that decision but I have some questions . . . for you." The officer asked Hull whether he could obtain a swab from the

inside of Hull's mouth, noting that it was "totally up to [Hull]" that Hull was not required to give the sample.

The third prong looks to the extent to which Hull was confronted with evidence of his guilt. *See id.* The officer told Hull they found evidence of the manufacture of methamphetamines in the bathroom where the fire started and that the police knew both Hull and his girlfriend had purchased pseudoephedrine. Hull declined to answer questions posed by the officer regarding this evidence. These questions were relatively few given the long inquiry made into Hull's background and his account of what happened the night of the fire.

Finally, we look to whether Hull was free to leave the place of questioning. *See id.* Hull was told multiple times by the officer that he was free to leave, that the door was unlocked, and that he was not under arrest. Weighing all of these factors, we conclude a reasonable man in Hull's position would not have believed himself to be in custody. *See id.*

C. Involuntary statements.

Hull next argues his statements were involuntary.

> Statements are voluntary if they were the product of an essentially free and unconstrained choice, made by the defendant whose will was not overborne or whose capacity for self-determination was not critically impaired. Our review is on the totality of the circumstances. A number of factors help in determining voluntariness. Among them are: defendant's age, whether defendant had prior experience in the criminal justice system, whether defendant was under the influence of drugs, whether *Miranda* warnings were given, whether defendant was mentally "subnormal," whether deception was used, whether defendant showed an ability to understand the questions and respond, the length of time defendant was detained and interrogated, defendant's physical and emotional reaction to interrogation, whether physical punishment, including deprivation of food and sleep, was used.

State v. Payton, 481 N.W.2d 325, 328-29 (Iowa 1992). Hull was thirty-three years old at the time of questioning; he obtained his general equivalency diploma after dropping out of high school. To support his claim his statements were not voluntary, Hull points to his consumption of pain medication,[3] his shifting and sighing during the interview, and his statements about not wishing to address certain questions without an attorney. We are not convinced. *See State v. Jennett*, 574 N.W.2d 361, 364 (Iowa Ct. App. 1997) (finding uneasiness of a subject during questioning does not constitute an abnormal physical condition). The totality of the circumstances, including Hull's pointed refusals not to answer certain questions he thought might be inculpatory and the officer's acceptance of the refusals, indicate Hull felt he was in charge and understood the import of the interview. Hull's statements were voluntarily given during the approximately hour-long interview.

D. Request for attorney in noncustodial setting.

Hull next argues we should expand the right to counsel under the Iowa Constitution to rule the right attaches during noncustodial interrogations. Indeed, at one time, we did interpret our Federal Constitution in this manner. *See State v. Kyseth*, 240 N.W.2d 671, 674 (Iowa 1976). However, that is not how we currently interpret the right to counsel. *See State v. Effler*, 769 N.W.2d 880, 890 (Iowa 2009) (requiring custodial interrogation for Fifth Amendment right and adversarial criminal proceedings for Sixth Amendment right). In any event, Hull did decline to answer specific questions without an attorney. The officer

[3] The record reveals the pain medication was morphine but does not include information about the dose taken, the time it was consumed, or the effects on Hull during the interview.

immediately moved on from those specific questions. We find Hull's argument without merit.

AFFIRMED.